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September 13, 2006

The Honorable A.G. Kawamura, Secretary
California Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814

Re: Request to Conduct Study to Reconcile CDFA and Cornell Dry Whey and Butter Manufacturing Cost Figures

Dear Mr. Secretary:

Western United Dairymen respectfully requests that the department undertake a study to compare the manufacturing cost figures for dry whey and butter released by CDFA with those recently released by the Cornell Program on Dairy Markets and Policy. Due to the large discrepancies, especially in the case of dry whey, we would like the department to identify and investigate the differences and delay implementation of the June 2006 hearing determinations pending conclusion of this warranted analysis.

The determination from the June 2006 hearing calls for implementation of a \$0.267 per pound dry whey manufacturing cost allowance in California in our Cheddar cheese formula. This allowance is based on the dry whey cost study released by CDFA, based largely on Mozzarella dry whey manufacturing costs, and is \$0.0732 per pound above the Cornell cost figures.

Western United Dairymen raised several questions concerning the sole use of the CDFA dry whey cost figures at the June 2006 hearing. Our concerns included, but were not limited to:

- Only three cheese plants were included in the skim whey cost study. Only one is a Cheddar cheese plant, while one is a Mozzarella plant and the other is a Parmesan plant. The Class 4b formula is based on Cheddar cheese, and it is inappropriate to assume the manufacture of dry whey from a Mozzarella facility is the same as that at a Cheddar facility.
- A different approach to setting the dry whey make allowance was taken by almost all participants at the recent federal order manufacturing cost allowance hearing. Brian Scott Burleson, Director of Manufacturing for the Ingredients Division of WestFarm Foods presented detailed data regarding the incremental cost to dry whey above the cost to dry nonfat dry milk. Even though CDFA dry whey manufacturing cost data was available, most testified in support of this method for determining the dry whey make

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allowance. Supporters included, but were not limited to, Dr. Robert D. Yonkers (National Cheese Institute), Robert D. Wellington (Agri-Mark Dairy Cooperative), Dennis J. Schad (Land O'Lakes), Daniel S. McBride (Northwest Dairy Association) and Sue Taylor (Leprino Foods). A review of some of the testimony highlighted significant deviations from the cost figures released by CDFA:

1. The USDA, RBCS Cost Study reported a weighted average cost of \$0.11409 per pound for the six plants surveyed nationwide. Though testimony at the FMMO hearing seems to indicate that these costs may be understated due to misunderstandings in reporting processes, this figure is considerably lower than that reported by CDFA.
2. At the February 2005 California hearing, Sue Taylor of Leprino Foods stated that Leprino had no dry whey facilities within the state of California. At the request of the hearing panel, she supplied dry whey manufacturing costs for their plants in New York and Michigan. The weighted average costs (adjusted to better reflect costs in California) were reported at \$0.2190 per pound. This is substantially lower than the \$0.2673 per pound cost reported in the CDFA cost studies and is derived from Mozzarella plants with higher dry whey manufacturing costs.
3. In a post-hearing brief submitted for the recent federal order, Dr. Yonkers of the National Cheese Institute supported a \$0.2220 per pound dry whey make allowance. This is substantially lower than that supported by California cheese manufacturers at this hearing.
4. In a post-hearing brief submitted for the recent federal order hearing, Sue Taylor of Leprino Foods states, "The proposed whey make allowance of \$0.2215 is also consistent with the cost that would be determined by adding the change in Leprino's sweet whey processing cost since the survey period that was used to establish the current whey make allowances." This is substantially lower than the \$0.2673 per pound cost reported in the CDFA cost studies.
5. In a post-hearing brief submitted for the recent federal order hearing on behalf of Agri-Mark, Inc., Northwest Dairy Association, Foremost Farms USA Cooperative, Associated Milk Producers, Inc., and Land O'Lakes, a \$0.2160 per pound dry whey make allowance was supported.

The figures reported and available for the June 1, 2006 hearing by cheese manufacturers nationwide (including some with plants and interests in California) seem to support a dry whey make allowance far below that detailed by the CDFA cost studies.

The recent release of the Cornell dry whey weighted average manufacturing cost of \$0.1941 per pound, based on 12 dry whey plants that produce the vast majority of their cheese as Cheddar, supports the testimony provided by WUD and once again fosters grave concern with the use of \$0.2673 per pound make allowance in the Class 4b Cheddar cheese formula. If implemented, this change will reduce Class 4b prices by an estimated \$0.384 per hundredweight. This is a significant reduction in the Class 4b formula. A change of this magnitude must be supported by uncontroverted data. Though the Secretary's determination makes no change to the butter make allowance, our board is interested in understanding the discrepancies between the studies on this as well, which on a percentage basis, is significant.

An in-depth study of the figures released by CDFA and Cornell is needed to justify the large discrepancy in the dry whey manufacturing cost figures as well as the sizeable difference in the butter figures. Again, our board respectfully asks that the department identify and investigate the differences and delay implementation of the hearing determinations pending the response.

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We thank you for your careful consideration of this request and look forward to your swift response.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael L. H. Marsh". The signature is fluid and cursive, with a large initial "M" and "L".

Michael L. H. Marsh, CPA
Chief Executive Officer

cc: A.J. Yates, Undersecretary
John Dyer, Chief Counsel
Kelly Krug, Director, Marketing Services
David Ikari, Chief, Dairy Marketing Branch
Case Van Steyn, Western United Dairymen